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**Capital City Fire Protection, Inc., James Gardner,  
(Trustee in Bankruptcy) and Road Sprinkler  
Fitters Local Union No. 669, UA, AFL-CIO.**  
Case 9-CA-37729

November 20, 2000

**DECISION AND ORDER**

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND  
HURTGEN

Upon a charge filed by the Union on June 15, 2000, and an amended charge filed on August 28, 2000, the General Counsel of the National Labor Relations Board issued a complaint on August 30, 2000, against Capital City Fire Protection, Inc., James Gardner (Trustee in Bankruptcy), the Respondent, alleging that it has violated Section 8(a)(1) and (5) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent failed to file an answer.

On October 16, 2000, the General Counsel filed a Motion for Summary Judgment with the Board. On October 17, 2000, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated September 19, 2000, notified the Respondent that unless an answer were received by September 27, 2000, a Motion for Summary Judgment would be filed. The Respondent, by letter dated October 5, 2000, advised the Regional Office that it would not be submitting an answer in this matter.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

At all material times, the Respondent, a corporation with an office and place of business in Frankfort, Kentucky, has been engaged in the installation of fire sprinklers. Since about August 4, 2000, James Gardner has been duly designated by the Assistant U.S. Trustee for the United States Bankruptcy Court, Eastern District of Kentucky, as the trustee in bankruptcy of the Respondent, with full authority to continue the Respondent's operations and to exercise all powers necessary to the administration of the Respondent's business.<sup>1</sup>

During the 12 months immediately preceding issuance of the complaint, the Respondent, in conducting its operations described above, purchased and received at its Frankfort, Kentucky facility goods valued in excess of \$50,000 directly from points outside the Commonwealth of Kentucky. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act, and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

At all material times, David N. Shofner has held the position of the Respondent's president, and has been a supervisor of the Respondent within the meaning of Section 2(11) of the Act and an agent of the Respondent within the meaning of Section 2(13) of the Act.

The following employees of the Respondent constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All journeymen sprinkler fitters, apprentices, and unindentured apprentice applicants employed at Respondent's Frankfort, Kentucky facility, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

Since about April 1, 1997, the Union has been the designated exclusive collective-bargaining representative of the unit described above and, since about April 1, 1997, the Union has been recognized as the representative by the Respondent. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which is effective from April 1, 2000 to March 31, 2005. At all times since April 1, 1997, based on Section 9(a) of the Act, the Union has been the exclusive collective-bargaining representative of the unit.

<sup>1</sup> It is well established that the institution of bankruptcy proceedings does not deprive the Board of jurisdiction or authority to entertain and process an unfair labor practice case to its final disposition. See, e.g., *Cardinal Services*, 295 NLRB 933 fn. 2 (1989), and cases cited there. Board proceedings fall within the exception to the automatic stay provision for proceedings by a governmental unit to enforce its police or regulatory powers. See *id.*, and cases cited therein.

Since about May 17, 2000, the Union has requested, in writing, that the Respondent furnish it with the following information:

1. A listing of all jobs, including job name and specific job location, whether active, completed or under contract, from January 1, 2000 to the present.
2. A listing of all individuals employed by Capital City Fire Protection, Inc. as of 4:00 p.m. on May 12, 2000, including their full name, address, social security number, job classification, hours worked, rate of pay, amount of benefits paid, and travel expenses or subsistence received (if any).

With the exception of employee social security numbers, the information requested by the Union is necessary for, and relevant to, the Union's performance of its duties as the exclusive collective-bargaining representative of the unit employees.<sup>2</sup>

Since about May 17, 2000, the Respondent has failed and refused to furnish the Union with the requested information.

#### CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively and in good faith with the exclusive collective-bargaining representative of its employees, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and (5) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(5) and (1), we shall order the Respondent to furnish the Union with the information it requested on May 17, 2000, with the exception of employees' social security numbers.

#### ORDER

The National Labor Relations Board orders that the Respondent, Capital City Fire Protection, Inc., James Gardner, (Trustee in Bankruptcy), Frankfort, Kentucky, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain collectively and in good faith with Road Sprinkler Fitters Local Union No. 669, UA, AFL-CIO, by failing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of the employees in the following appropriate unit:

All journeymen sprinkler fitters, apprentices, and unindentured apprentice applicants employed at Respondent's Frankfort, Kentucky facility, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Furnish the Union with the information it requested on May 17, 2000, with the exception of employees' social security numbers.

(b) Within 14 days after service by the Region, post at its facility in Frankfort, Kentucky, copies of the attached notice marked "Appendix."<sup>3</sup> Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since May 17, 2000.

(c) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

<sup>2</sup> The Board has held that social security numbers are not presumptively relevant. Accordingly, in the absence of a showing here of their potential or probable relevance, we deny the motion for summary judgment with respect to the failure to provide social security numbers, and remand that issue to the Regional Director for further appropriate action. See, *American Gem Sprinkler Co.*, 316 NLRB 102, 104 fn. 7 (1995); *Turner-Brooks of Ohio*, 310 NLRB 856, 857 fn. 1 (1993), enfd. mem. 9 F.3d 108 (6th Cir. 1993); and *Sea-Jet Trucking Corp.*, 304 NLRB 67 (1991).

<sup>3</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

IT IS FURTHER ORDERED that the complaint allegation concerning the failure to provide employees' social security numbers is remanded to the Regional Director for further appropriate action.

Dated, Washington, D.C. November 20, 2000

_____ John C. Truesdale,	Chairman
_____ Wilma B. Liebman,	Member
_____ Peter J. Hurtgen,	Member

(SEAL) NATIONAL LABOR RELATIONS BOARD  
APPENDIX  
NOTICE TO EMPLOYEES  
POSTED BY ORDER OF THE  
NATIONAL LABOR RELATIONS BOARD  
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain collectively and in good faith with Road Sprinkler Fitters Local Union No. 669, UA, AFL-CIO, by failing to furnish the Union with information that is relevant and necessary to its role as the exclusive bargaining representative of our employees in the following appropriate unit:

All journeymen sprinkler fitters, apprentices, and unindentured apprentice applicants employed by us at our Frankfort, Kentucky facility, excluding all office clerical employees and professional employees, guards and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL furnish the Union with the information it requested on May 17, 2000, with the exception of employees' social security numbers.

CAPITAL CITY FIRE PROTECTION, INC.